



Intro to the PDES/Senior Adjudicators Course

REFERENCES

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References

Session Objectives



- To identify the primary references governing the requirements for retirement or separation for physical disability.
- To identify the supplemental references for understanding the medical aspects and duty performance expectations.
- To identify related publications for ancillary issues
- To identify paragraph cites for particular issues.
- To reflect understanding of session objectives by successfully completing a practical exercise.



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Index of Slides (Omitting Title Page, Objectives, and Index)

- #4. Selected Sections of Law
- #5. DoD Issuances [disability directive and the two instructions.]
- #6. Related DoD documents [implementation date for the directive/instructions and cessation of imminent death processing.]
- #7. DVA Schedule for Rating Disabilities.
- #8. Relationship of the DVA Rating Schedule to the PDES.
- #9. Relationship of the DVA Rating Schedule to the PDES [quotation of para 4.2 of DoDI "39"].
- #10. Relationship of the DVA Rating Schedule to the PDES [quotation from DoDI "39" Encl 2].
- #11. Army publications [website and SA memo ceasing imminent death processing.]
- #12. Army Publications/Issuance [AR 635-40].
- #13 - #15. Army Publications [PDA Policy/Guidance Memorandums]
- #16 - # 17. HQUSAPDA Medical Issue and Guidance Memorandums
- #18. Primary Army Medical Regulations
- #19. Supplemental Helps.
- #21 - 23. Related Publications [regulations which address ancilliary issues.]
- #24 - 25. PE
- #26 - 27. Answer Key to PE



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References: Primary Selected Sections of Law



- 10 USC, chapter 61 (retirement or separation for physical disability)
 - 10 USC 1206a (NDAA 05, mobilized RC released within 30 days for pre-existing condition, no coverage under 1207a).
 - 10 USC 1207a (eight-year coverage)
 - 10 USC 1212 (disability severance pay to include grade at which paid)
 - 10 USC 1217 (NDAA 05 coverage of US military academy cadets)
- 10 USC 1372 (grade on retirement for physical disability)
- 10 USC 1401 (computation of disability retired pay; includes table of formulas by law).
- 10 USC 1402 and 1402a (recomputation of retired pay for “retiree recalls”).
- 10 USC 1406 and 1407 (“retired pay base” pre 8 Sep 80 and post 7 Sep 80).
- NDAA 07:
 - Change to 10 USC 1409 reference lifting of 75% cap does not pertain to disability retirements.
 - Adds new section 10 USC 1222. Physical Evaluation Boards (rationales, counseling, training).



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References: Primary DoD Issuances



- Obtaining the publications
 - <http://www.dtic.mil/whs/directives>.
 - PDA site: <https://www.hrc.army.mil/site/active/TAGD/pda/pdapage.htm>
- Disability issuances
 - DoD Directive 1332.18, Separation or Retirement for Physical Disability, November 4, 1996
 - DoD Instruction 1332.38, Physical Disability Evaluation, November 14, 1996
 - DoD Instruction 1332.39, Application of the [Department of Veterans Affairs] Schedule for Rating Disabilities, November 4, 1996
- **Note:** The revision of AR 635-40 to incorporate above DoD policy was not published. The current AR 635-40, Feb 06, reflects a limited change as documented by the summary of change on the inside cover. The summary of change advises that AR 635-40 should be read in conjunction with the DoD issuances throughout the publication.



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References: Primary Related DoD Documents



- Memorandum, OUSD P&R, MPP/OEPM, 20 March 1997, subject: Implementation of DoD Directive 1332.18 and DoD Instructions 1332.38 & 1332.39
 - NOTE: Implementation of DoDI "38" deferred to 15 May 1997. The DoDD and DoDI "39" were effective when signed.
- Memorandum, OUSD P&R, Dec 23, 2003, subject: Change to Imminent Death Processing Policy in DoD Instruction 1332.38.
 - Located on USAPDA website.



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References: Primary DVA Schedule for Rating Disabilities



- Official Title: Title 38, Code of Federal Regulations, Part 4, Schedule for Rating Disabilities
 - Can locate at DVA publications site: <http://www.warms.vba.va.gov>
 - Also linked on PDA web site under "FOIA, Regulations, policy" and then "External References."
https://www.hrc.army.mil/tagd/pda/policy_refs.htm
- Supplements (changes) are posted at <http://www.warms.vba.va.gov/bookc.html>
- HQUSAPDA Medical Section routinely checks site to notify PEBs of any changes.



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References: Primary

Relationship of the DVA Rating Schedule to the PDES



- Under military disability law (10 USC chapter 61), a 30 percent rating under the DVA Schedule is the demarcation line between disability retirement and disability separation for members determined unfit with less than 20 years of 10 USC 1208 service.
- Excerpt from the law at 10 USC 1201(b)(3)(B):
 - “....the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and either...”



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References: Primary

Relationship of the DVA Rating Schedule to the PDES



- DoDI 1332.39, (page 2)

“4.2. Standard. Chapter 61 of [title 10] establishes the Department of Veterans Affairs’ [Schedule for Rating Disabilities] as the standard for assigning percentage ratings. The percentage ratings represent, as far as can practicably be determined, the average impairment in civilian occupational earning capacity resulting from certain diseases and injuries, and their residual conditions. However, not all the general policy provisions in Sections 4.1 – 4.31 of the [Schedule] are applicable to the Military Departments. Many of these policies were written primarily for DA rating boards and are intended to provide guidance under laws and policies applicable only to the DVA. This instruction replaces those sections of the [Schedule]. The remainder of the [Schedule] is applicable except those portions that pertain to DVA determinations of Service connection, refer to internal DVA procedures or practices, or are otherwise specifically identified in Enclosure 2 as being inapplicable.”



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References: Primary, Cont.

Relationship of the DVA Rating Schedule to the PDES



- DoDI 1332.39, Enclosure 2, Special Instructions and Explanatory Notes (page 19)

“ E2.1. General

E2.1.1. This enclosure is a supplement to the [Schedule] that contains principles for rating disabilities where additional guidance or clarification is needed for processing active duty and Reserve military disability cases. Portions requiring special comment, or that have been the cause of misunderstanding in the past, are included. Comments and rating instructions also supplement the [Schedule] in those instances in which recent medical advances are inadequately covered. Supplements to the [Schedule] published by the DVA following the effective date of this Instruction shall take precedence unless the changes included in the supplement are identified by the [ASD(HA)] through a published interim change to this Instruction to be inappropriate to military requirements.

E2.1.2. In adjudicating cases, the [Schedule] is the starting point and initial guidance for an impairment rating. Because this enclosure modifies selected [Schedule] ratings, it is the final reference for impairment adjudications.” ____



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References: Primary Army Publications



- Regulations available on <http://www.apd.army.mil> or <http://www.usapa.army.mil>
- Memo, ASA(M&RA), January 16, 2004, subject: Change to Imminent Death Processing Policy in Department of Defense Instruction 1332.38.
 - Note, memo implements OSD memo dated 23 Dec 03, same subject.
 - Memo is on PDA website at link for FOIA/policy memos. See link for info on imminent death processing.



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References: Primary Army Regulations



- AR 635-40, Physical Evaluation for Retention, Retirement, or Separation, 8 Feb 06
 - It is important to note that this is not a complete revision. It is a change to update guidance on COAD/COAR, PEB board composition, and references. See summary of change on the inside front cover.
- Information Paper (28 Feb 05 copy on the PDA website.)
- MILPER Message NR 00-77, subject, Change to Disability Orders Processing
 - Copy can be obtained from MILPER message page under the link for expired messages.
 - Though expired, the info/procedures remain current, unless superseded by other MILPER messages.
 - Message notified that PDA relinquished disability orders function to those installations that have TRANSPROC. Explains how disposition date is determined.
- Internal Control Checklist. Covers only TDRL (to be included in revision of AR 635-40.)



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References: Primary PDA Policy/Guidance Memorandums



- Addresses issues not covered in the regulation or clarifies regulatory guidance.
- USAPDA policy memorandums cannot supersede regulatory guidance.
- Updated at a minimum when there is a change of Deputy Commanders.
- Located on the USAPDA website.



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References: Primary Policy/Guidance Memorandums



- #1 28 Feb 05 Compensating Unfitting Disabilities Incurred During Previous Period of Extended AD
- #2 28 Feb 05 Conditional Adjudication
- #3 28 Feb 05 Enactment of Eight-Year Law for EPTS Conditions
- #4 28 Feb 05 Processing RC Nonduty Related Cases
- #5 28 Feb 05 Information Obtained on Cases under Adjudication or Review.
- #6 28 Feb 05 Medical Records
- #7 28 Feb 05 VASRD Ratings for Mental Disorders, Narcolepsy, and Sleep Apnea Syndrome
- #8 28 Feb 05 Medical Evaluation Boards on Medical Corps Officers
- #9 28 Feb 05 Minimal Requirements for the Rationale on DA Form 199



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References: Primary Policy/Guidance Memorandums



- #10 28 Feb 05 Disability Disposition of Soldiers with Symptoms Associated with Gulf War Illness
- #11 28 Feb 05 Determining Metabolic Equivalents (METs) in Cardiovascular Cases
- #12 28 Feb 05 Table of Analogous Codes
- #13 28 Feb 05 Rating of Pain
- #14 28 Feb 05 Rating Guidance for Human Immunodeficiency Virus Infection
- #15 28 Feb 05 Adjudication Training
- #16 28 Feb 05 Presumption of Fitness
- #17 28 Feb 05 Identification of Cases of Soldiers Pending Promotion or Requiring Grade Determinations
- #18 8 Feb 07 PEB Administrative Termination of Cases Inadequate for Adjudication and Due to other Reasons



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References: Primary

HQUSAPDA Medical Issue and Guidance Memorandums



- Promulgated by USAPDA memo, AHRC-DZB, 1 April 2005, Subject: Dissemination of HQ Adjudication-related Guidance.
- Address Medical issues that merely require clarification or interpretation of policy but do not rise to the level of policy.
- Maintained by USAPDA HQ Medical Section.
- Are not posted on the PDA website.
- Not cited in PEB rationales.



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References: Primary

HQUSAPDA Medical Issue and Guidance Memorandums



- #1. 28 March 2005 Musculoskeletal System: DC 5003
- #2. 25 May 2005 Neurological Conditions & Convulsive Disorders, Miscellaneous Diseases, DC 8100
- #3. 25 May 2005 Conditions not Constituting a Physical Disability (DoDI 1332.38, Encl 5) [latex allergy]
- #4. 25 May 2005 Conditions not Constituting a Physical Disability (DoDI 1332.38, Encl 5) [phobic disorders]
- #5. 25 May 2005 Mental Disorders [depression in relation to multiple psychiatric diagnosis]
- #6. 25 May 2005 Musculoskeletal System [muscle spasm]
- #7. 25 May 2005 Respiratory system: DC 6847 [CPAP]
- #8. 25 May 2005 Musculoskeletal system [stress fractures and reactions]
- #9. 10 Aug 2005 The Endocrine System: DC 7913 (Diabetes Mellitus)



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References: Primary Army Medical Regulations



- AR 40-400, Patient Administration AR 40-501, Standards of Medical Fitness,
 - See para 2-9 concerning refusal of care for remedial defects.
 - See chapter 7 for requirements for Medical Evaluation Boards (MEBs).
 - (AR 40-3, which formerly included MEBS, now covers advance directives, auditory evaluations, blood programs, emergency medical services, transplant program, etc.)
- AR 40-501, Standards of Medical Fitness
 - Note para 3-3d. Concerns whether those at end of career with chronic conditions should be referred to a MEB. Note that the given guidance pertains only to those “retention standards” which include the phrase, “if interferes with satisfactory performance of duty.”
 - Chapters 9 and 10 retain to the USAR and ARNG, respectively.



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References: Supplemental Helps



- Department of Veterans Affairs Examination Worksheets. (These replaced the Physician's Guide for Disability Evaluation Examination that is referenced in AR 635-40 and AR 40-400.)
 - Located at <http://www.vba.gov/bin/21/benefits/exams/index.htm>
- Guides to the Evaluation of Permanent Impairment, American Medical Association
- The Merck Manual of Diagnosis and Therapy
- AR 611-1, Military Occupational Classification Structure Development and Implementation
- DA Pam 611-21, Military Occupational Classification and Structure
 - Concerned with the physical requirements, not the profile.
 - The designated profile is for entrance into the MOS, not retention in the MOS.



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References: Related Publications



- DoD Directive 1241.1, Reserve Component Medical Care and Incapacitation Pay for Line of Duty Conditions.
- DoD Instruction 1241.2, Reserve Component Incapacitation System Management.
- AR 135-381, Reserve Components Incapacitation System.



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References: Related Publications



- AR 600-8-4, Line of Duty Policy, Procedures and Investigations
 - This regulation is essentially a reprint of those portions of the 1986 AR 600-8-1 that covered LD with additional LD guidance for AD death cases.
 - USAPDA granted special guidance that allows AD cases to come forward without a LD unless the situation requires a formal.
 - Memo, AHRC-PED-S, 24 June 2005, subject: Clarification of Requirement for Line of Duty Investigations (LODI) for Soldiers Being Referred into the Physical Disability Evaluation System (PDES).



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References: Related Publications



- AR 600-8-10, Leaves and Passes.
 - See para 4-21 concerning required selling of accrued leave.
 - See para 5-35d(8) and (9) for eligibility for Permissive TDY.
- AR 600-8-101, Personnel Processing (In-and-Out-Soldier Readiness Mobilization) and Deployment Processing
- DA PAM 600-8-101 (same as above)
- AR 600-20, Army Command Policy
 - See para 5-4c for referral for fitness for duty medical examination.
 - See para 5-4d for refusal of medical care.



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References: Related Publications



- AR 600-60, Physical Performance Evaluation System
- AR 600-8-19, Enlisted Promotions and Reductions
- AR 600-8-24, Officer Transfers and Discharges
 - See para 1-22 and 1-23 for precedence of referral to PDES over other separation actions.
- AR 600-85, Army Substance Abuse Program
- AR 601-210, Regular Army and Army Reserve Enlistment Program
 - See para 3-7, exception for combat partially disabled.
 - See para 4-5, waiver requirements for medical disqualification (to include those previously separated for disability.
 - See para 4-24 for nonwaiverable disqualifiers.
 - See para 5-55 for enlistment of TDRL fits.
- AR 601-280, Total Army Retention Program
- AR 635-200, Enlisted Separations
 - See para 1-33, precedence of medical disposition over administrative separation



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References: PE: True or False



- ___ 1. The rating guidance in AR 635-40, Appendix B, takes precedence over the rating guidance in DoD Instruction 1332.39.
- ___ 2. Policy memorandums and the medical issue and guidance memorandums are methods to revise the policies of AR 635-40 in advance of publishing a regulation.
- ___ 3. The PEB may use the American Medical Association's, Guides to the Evaluation of Permanent Impairment in lieu of the DVA Schedule for Rating Disabilities to determine disability rating percentages.
- ___ 4. The DoD Instruction 1332.39 interprets the DVA Schedule for Rating Disabilities.
- ___ 5. The DoD Instruction 1332.39 may modify the DVA Schedule.



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References: PE: True or False



- ____ 6. The primary Army regulation that governs the policies and procedures for conduct of Medical Evaluation Boards is AR 40-400, chapter 7.
- ____ 7. The Army regulation that lists the medical conditions that are cause for referral to a Physical Evaluation Board is AR 40-501.
- ____ 8. Army Regulation AR 635-40 must be read in conjunction with DoD Directive 1332.18, DoD Instrsuction 1332.38, and DoD Instrsuction 1332.39.
- ____ 9. The DoD Instruction 1332.38 is up to date with current disability law. The DoD Instruction 1332.39 is up to date with current DVA rating guidance.
- ____ 10. While the DoD issuances are all dated 1996, DoDI 1332.38 was not implemented until 15 May 1997.



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References: PE: True or False Answer Key

1. **False.** The rating guidance in AR 635-40, App B, takes precedence over the rating guidance in DoD Instruction 1332.39.

Rationale. The DoDI post dates the basic AR 635-40. The rapid action change dated 8 Feb 06 is not a complete revision and does not address rating guidance. AR 635-40, Appendix B, would apply to those aspects not covered in the DoDI and not superseded by more current guidance in the DVA Rating Schedule.

2. **False.** Policy memorandums and the medical issue and guidance memorandums are methods to revise the policies of AR 635-40 in advance of the staffing and publishing of a revised regulation.

Rationale. Army policy is promulgated in Army regulations. Such policy has been reviewed by the Office of the Judge Advocate General and the Office of the Army General Council. Therefore, USAPDA policy memorandums cannot be used to revise the guidance of AR 635-40.

3. **False.** The PEB may use the American Medical Association's, Guides to the Evaluation of Permanent Impairment, to determine the applicable percentage under a given DVA Code instead of using the Code's descriptive criteria.

Rationale. Military disability law establishes the DVA Schedule for Rating Disabilities as the rating instrument.



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References: PE: True or False Answer Key

4. **True.** The DoD Instruction 1332.39 interprets the DVA Schedule for Rating Disabilities.

Rationale. DoDI 1332.39, para 4.2 (page 2): "Chapter 61....establishes the [DVA Schedule] as the

standard for assigning percentage ratings...However, not all the general policy provisions in Sections

4.1 - 4.3 of the [Schedule] are applicable...This Instruction replaces these sections...The remainder...is applicable except those portions that pertain to DVA determinations of Service connection, refer to internal DVA procedures or practices, or are otherwise specifically identified in

Enclosure 2 as being inapplicable." Also see Encl 2, para E2.1.1 (page 19).

5. **True:** The DoD Instruction 1332.39 may modify the DA Schedule.

Rationale. Currently the DoDI included guidance that modifies the schedule. (As an example,

compare the Guidance in the Schedule for sleep apnea with that in the DoDI. DoD OGC has recently

affirmed such modification is OK. However, the Services must obtain approval of DoD to modify the

Schedule over and above the DoDI 1332.39.

6. **True.** The primary Army regulation that governs the policies and procedures for conduct of Medical Evaluation Boards is AR 40-400, chapter 7.

Note: The DoDI 1332.38, Encl 4, Attachment 1, has additional guidance. AR 635-40, Chapter 4,

section III, also has guidance; but AR 40-400 is the "proponent" regulation.



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References: PE: True or False Answer Key

7. **True.** The Army regulation that lists the medical conditions that are cause for referral to a Physical

Evaluation Board is AR 40-501.

Note: The DoDI 1332.38, Enclosures 4 and 5 offer additional guidance.

8. **True.** AR 635-40 must be read in conjunction with DoD Directive 1332.18, DoD Instruction 1332.38, and DoD Instruction 1332.39 because the DoD issuances post date the basic AR 635-40. [Note the 8 Feb 06 AR 635-40 reflects a rapid action change—not a complete revision.]

9. **False.** The DoD Instruction 1332.38 is up-to-date with current disability law. The DoD Instruction

1332.39 is up-to-date with current DVA rating guidance.

Rationale. The DoD Instruction 1332.38 only reflects current law through about 1996. As examples,

it doesn't reflect the 8-year coverage under 10 USC 1207a; the early qualification for retired pay for RC under 10 USC 12731b; retirement for disability at promotion list grade under 10 USC 1372; or payment of disability severance pay at promotion list grade.

10. **True.** While the DoD issuances are all dated 1996, DoDI 1332.38 was not implemented until 15 May 1997.

Rationale. Per OUSD Memo, 20 March 1997, subject: Implementation of DoD Directive 1332.18 and DoD Instructions 1332.38 and 1332.39.